

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

Com. Sub for
HOUSE BILL No. 234

(By Mr. *Originator in the*)
Com. on Insurance.



PASSED March 12 1949

In Effect From Passage



234

ENROLLED
COMMITTEE SUBSTITUTE FOR
House Bill No. 234

[Originating in the Committee on Insurance.]

[Passed March 12, 1949; in effect from passage.]

AN ACT to repeal section twenty, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said article by adding thereto twelve new sections to be numbered, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven and forty-eight, all relating to the investment of the capital, surplus, assets and other funds of life insurance companies organized under the laws of this state.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, article three, chapter thirty-three

of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that said article be amended by adding thereto twelve new sections to be numbered thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven and forty-eight, to read as follows:

Section 37. *Authorized Investments.*—The capital, sur-
2 plus, assets, and other funds of life insurers organized
3 under the laws of this state shall be invested as provided
4 in this article, and not otherwise.

Sec. 38. *General Qualifications.*—No security or other
2 investment shall be eligible for purchase or acquisition
3 unless it is interest bearing or interest accruing or divi-
4 dend or income paying, is not then in default in any re-
5 spect, and the insurer is entitled to receive for its ex-
6 clusive account and benefit, the interest or income ac-
7 cruing thereon; except real estate, as provided by sec-
8 tion forty-one of this article. No security shall be eligible
9 for purchase at a price above its market value.

Sec. 39. *General Limitation Any One Person.*—An in-
2 surer shall not have at any time, except with the consent

3 of the commissioner, any combination of investments
4 in or loans upon the security of the obligations, property,
5 and securities of any one person, institution, or municipal
6 corporation aggregating an amount exceeding five per
7 cent of the insurer's assets. This section shall not apply
8 to investments in or loans upon the security of general
9 obligations of or obligations fully guaranteed by the
10 government of the United States or of any state or terri-
11 tory of the United States, or the District of Columbia, or
12 to political subdivisions of the State of West Virginia,
13 nor to investments in foreign securities pursuant to para-
14 graph (a) of section forty-two nor to policy loans made
15 pursuant to section forty-five of this article.

Sec. 40. *Investments in Securities.*—(a) Any domestic
2 insurer may invest in the following securities:

3 (1) Bonds or securities which are the direct obligation
4 of or which are secured or guaranteed in whole or in
5 part as to principal and interest by the United States,
6 any state or territory of the United States, or the District
7 of Columbia, where there exists the power to levy taxes
8 for the prompt payment of the principal and interest of

9 such bonds or evidences of indebtedness, and, in bonds
10 issued by the federal land banks.

11 (2) Bonds or evidences of indebtedness which are di-
12 rect general obligations of any county, district, city, town,
13 village, school district, park district, or other political
14 subdivision of this state or any other state or territory
15 of the United States, or the District of Columbia, or of
16 the Dominion of Canada, which shall not be in default
17 in the payment of any of its general obligation bonds,
18 either principal or interest, at the date of such invest-
19 ment; where they are payable from ad valorem taxes
20 levied on all the taxable property located therein and
21 the total indebtedness after deducting sinking funds
22 and all debts incurred for self-sustaining public works
23 does not exceed ten percentum of the actual value of all
24 taxable property therein on the basis of which the last
25 assessment was made before the date of such invest-
26 ment.

27 (3) Obligations issued or guaranteed by the interna-
28 tional bank for reconstruction and development.

29 (4) Entire first mortgages on improved unencumbered

30 real estate or the entire issue of bonds secured thereby
31 located within any of the states of the United States or
32 the District of Columbia worth at least fifty percentum
33 more than the amount loaned thereon, based on sound
34 appraisal by a competent appraiser and duly certified by
35 him, provided that the investment in any one mortgage
36 or any one issue of bonds or any one contract for deed
37 does not exceed twenty thousand dollars or two per-
38 centum of the company's assets, whichever is the
39 greater.

40 "Improved real estate", as used in this section, means
41 all farm land which has been reclaimed and is used for
42 the purpose of husbandry, whether for tillage or pas-
43 ture, and all real property on which permanent buildings
44 suitable for residence or commercial use are situated.

45 Real property shall not be deemed to be encumbered
46 within the meaning of this section by reason of the exist-
47 ence of instruments reserving or excepting mineral rights
48 and interests, rights-of-way, sewer rights and rights in
49 walls or easements, nor by reason of building restrictions
50 or other restrictive covenants, nor by reason of the fact

51 that it is subject to lease under which rents or profits
52 are reserved to the owners; provided that the security
53 for such investment is a full and unrestricted first lien
54 upon such real property and that there is no condition
55 nor right of re-entry or forfeiture under which such
56 investments can be cut off, subordinated or otherwise
57 disturbed.

58 Notwithstanding the restrictions herein set forth any
59 domestic insurer may invest (1) in bonds or notes
60 secured by mortgage or trust deed insured by the federal
61 housing administration or in debentures issued by it un-
62 der the terms of an act of Congress of the United States
63 entitled the "National Housing Act", as heretofore or
64 hereafter amended and (2) in securities issued by na-
65 tional mortgage associations established by or under the
66 authority of the National Housing Act, and (3) in bonds
67 or notes secured by mortgage or trust deed guaranteed
68 as to principal by the administrator of veterans' affairs
69 pursuant to the provisions of Title III of Act of Congress
70 of the United States as of June twenty-two, one thousand
71 nine hundred forty-four, entitled the "Servicemen's Re-

72 Adjustment Act of one thousand nine hundred forty-
73 four", as heretofore or hereafter amended.

74 Notwithstanding the restrictions herein set forth the
75 amount of any first mortgage investment as limited by
76 the first paragraph of this subsection (4) may be ex-
77 ceeded if and to the extent that such excess shall be
78 guaranteed by the administrator of veterans' affairs pur-
79 suant to the provisions of Title III of an Act of Congress
80 of the United States of June twenty-two, one thousand
81 nine hundred forty-four, entitled the "Servicemen's Re-
82 Adjustment Act of one thousand nine hundred forty-
83 four", as heretofore or hereafter amended.

84 No such domestic insurer shall in any manner, either
85 directly or indirectly, by means of corporations, holding
86 companies, trustees or otherwise, invest in real estate
87 securities junior to first mortgages unless the first mort-
88 gage in its entirety is owned by the insurer.

89 (5) Subject to the limit set forth in subsection (b),
90 bonds, or evidence of indebtedness issued or guaranteed
91 by any railroad corporation or corporations (other than
92 those organized and chartered for the sole purpose of

93 holding stock of other corporations) created under the
94 laws of the United States or any of the states of the
95 United States or the District of Columbia or any certifi-
96 cates of any equipment trust created on behalf of any
97 such railroad corporation.

98 (6) Subject to the limit set forth in subsection (b),
99 bonds or evidence of indebtedness of any solvent public
100 utility corporation or corporations (other than those
101 organized and chartered for the sole purpose of holding
102 the stock of other corporations) created under the laws
103 of the United States or of any of the states of the United
104 States or the District of Columbia.

105 (7) Subject to the limit set forth in subsection (b),
106 bonds or evidences of indebtedness issued by any solvent
107 corporation or corporations (other than those mentioned
108 in paragraphs (5) and (6) and other than corporations
109 organized and chartered for the sole purpose of holding
110 the stock of other corporations) created under the laws
111 of the United States or of any of the states of the United
112 states or the District of Columbia.

113 (8) Preferred or guaranteed stock issued or guar-

114 anteed by any solvent corporation or corporations cre-
115 ated under laws of the United States or any of the states
116 of the United States or the District of Columbia: *Pro-*
117 *vided*, That such stock are not in default as to payment of
118 any current dividends.

119 Such domestic insurer shall not invest in or loan any
120 of its funds on its own stocks.

121 (9) Loans upon the pledge of bonds, mortgages, se-
122 curities, stock or evidence of indebtedness acceptable as
123 investment for the lending insurer under the terms of
124 this article and subject to the same limits as to each
125 security as is provided herein for investment, if the face
126 or current market value whichever is less of such mort-
127 gages is more than the amount loaned thereon, and the
128 current market value of such bonds, securities, preferred
129 or guaranteed stock or evidences of indebtedness is at
130 least twenty percentum more than the amount loaned
131 thereon. This limitation shall not apply to loans on the
132 pledge of bonds or securities of or guaranteed by the
133 United States.

134 (10) Shares of insured state chartered building and

135 loan associations and federal savings and loan associa-
136 tions, if such shares are insured by the federal savings
137 and loan insurance corporation as specifically set forth
138 under the terms of Title IV of an Act of the Congress
139 of the United States entitled the "National Housing
140 Act".

141 (11) In bank certificates of deposit and bankers' ac-
142 ceptances, and other bills of exchange of the kind and
143 maturities made eligible by law for purchase in the open
144 market by federal reserve banks.

145 (b) Any domestic life insurer, in addition to the in-
146 vestments permitted by subsection (a), may invest in
147 the shares of capital stock and securities of any solvent
148 corporation created under the laws of the United States,
149 or of any of the states of the United States, or the Dis-
150 trict of Columbia, provided that such corporation has
151 earned during any three of the five fiscal years next
152 preceding the date of the investment, a sum applicable
153 to dividends equal in the aggregate to not less than twelve
154 percentum of the par value (or, in the case of shares hav-
155 ing no par value, the issue value) of its outstanding

156 shares. Such insurer shall not invest in more than five
157 per centum of the total number of shares of any one such
158 corporation, or more than two per centum of its assets
159 in the shares (or securities) of any one such corporation,
160 nor shall it invest in shares and securities permitted by
161 this subsection, more than the amount of its capital and
162 surplus in the case of a stock company, or surplus in the
163 case of a company other than stock.

Sec. 41. *Restriction on Acquisition and Holding of Real*

2 *Property.*—(a) No domestic life insurer may acquire or
3 hold real property except as follows:

4 (1) Such as shall be requisite for the convenient ac-
5 commodation of the transaction of its own business; the
6 amount invested in such real property shall not exceed
7 five percentum of the investing insurer's assets but the
8 commissioner may grant permission to the insurer to in-
9 vest in real property for such purpose, in such increased
10 amount as he may deem proper on the showing made if,
11 upon a hearing held before him, he shall find that the
12 amount represented by such percentage of its assets is
13 insufficient to provide convenient accommodations for the

14 insurer's business.

15 (2) Such as shall have been mortgaged to it in good
16 faith by way of security for loans previously contracted
17 or for monies due;

18 (3) Such as shall have been conveyed to it in satis-
19 faction of debts previously contracted in course of its
20 dealings;

21 (4) Such as shall have been purchased at sales on judg-
22 ments, decrees or mortgages obtained or made for such
23 debts; and

24 (5) Such unencumbered real property as shall have
25 been acquired in whole or in part, in exchange for real
26 property of approximately the same value theretofore
27 legally acquired and held by it;

28 (6) Such as shall be held as security for contracts for
29 deeds;

30 (7) (A) Such as may be acquired for the purpose of
31 leasing the same to any person, firm, or corporation, or
32 real estate already leased under the following conditions;

33 a. (1) Where there has already been erected on said
34 property a building or other improvements satisfactory

35 to the purchaser, or (2) where the lessee shall at its own
36 cost erect thereon, free of liens, a building or other im-
37 provements satisfactory to the lessor, or (3) where the
38 lessor under the terms and conditions of a lease executed
39 and entered into simultaneously with the purchaser of
40 the property agrees to erect a building or other improve-
41 ments on said property.

42 b. That the said improvements shall remain on the
43 said property during the period of the lease, and in cases
44 where the said improvements are put upon said property
45 at the cost of the lessee the said improvements at the
46 termination of the lease shall vest, free of liens, in the
47 owner of the real estate.

48 c. That during the term of the lease the lessee shall
49 keep and maintain the said improvements in good repair.
50 Real estate acquired pursuant to the provisions of this
51 part (A) shall not be valued in an amount exceeding the
52 amount actually invested reduced each year by equal de-
53 crements sufficient to write off at least seventy-five per
54 cent of the investment at the normal termination of the
55 lease or at the end of thirty years should the term of the

56 lease be for a longer period. The total investments of
57 any company under this part (A) shall not exceed five
58 per cent of its assets, nor more than the sum of its capital
59 and surplus, whichever is less.

60 (B) Subject to approval of the commissioner, real
61 estate for recreation, hospitalization, convalescence and
62 retirement purposes of its employees. Such investment
63 shall not exceed five per cent of the company's surplus.

64 (C) No investment shall be made by any company
65 pursuant to this paragraph (7) which will cause such
66 company's investment in all real property owned or held
67 by it directly or indirectly to exceed ten per cent of its
68 assets.

69 (b) All real property acquired for purposes, or in the
70 manner, specified in paragraphs other than paragraphs
71 (1), (6) and (7) of subsection (a) of this section may
72 be held for a period of five years after the insurer shall
73 have acquired title to the same and thereafter until the
74 date specified in an order issued by the commissioner
75 directing the insurer to dispose of the same. The date
76 specified in such order shall be not less than six months

77 from the date of the service of the said order upon the
78 insurer. No such order shall be issued without a hearing
79 and a determination by the commissioner that the inter-
80 ests of the insurer will not suffer materially by the sale of
81 the same within the period to be specified.

Sec. 42. *Foreign Securities.*—(a) An insurer authorized
2 to transact insurance in a foreign country may invest any
3 of its funds, in aggregate amount not exceeding by more
4 than five per cent, its deposit and reserve obligations in-
5 curred in such country, in securities of or in such country
6 possessing characteristics and of a quality similar to those
7 required pursuant to this chapter for investments in the
8 United States.

9 (b) An insurer may invest any of its funds, in an aggre-
10 gate amount not exceeding five per cent of its assets, in
11 addition to any amount permitted pursuant to paragraph
12 (a) of this section, in obligations of the governments of
13 Canadian provinces or municipalities, and in obligations
14 of Canadian corporations which are otherwise of equal
15 quality to like United States public or corporate securities
16 as prescribed in this act.

Sec. 43. *When Restrictions not Applicable.*—(a) The
2 restrictions of sections forty and forty-one shall not apply
3 to securities or other assets acquired through merger or
4 consolidation with any other insurer or through a rein-
5 surance agreement, if such assets when originally ac-
6 quired constituted legal investments for the merger, con-
7 solidated, or ceding insurer which acquired them, nor
8 shall provisions apply to securities, obligations or other
9 assets accepted incident to the adjustment or realization
10 of any debt or investment when deemed by the board of
11 directors or investment committee to be in the best in-
12 terests of the insurer, but subject to the provisions of sub-
13 section (b) all such securities, obligations or other assets
14 so acquired or accepted after the effective date of this
15 act which are not in accordance with the provisions of
16 this chapter shall be disposed of not later than five years
17 after the date of such acquisition or acceptance, or if ac-
18 quired prior to the effective date of this act, not later
19 than five years after such effective date.

20 (b) The commissioner upon application by the insurer
21 may extend the time for the disposition of such securities,

22 obligations or other assets for such period or periods as
23 he may deem proper on the showing made, if he is satis-
24 fied that such insurer will suffer materially by the forced
25 sale thereof; and the commissioner shall grant a hearing
26 to the insurer upon request.

Sec. 44. *Excessive Commissions Prohibited; Interest of*
2 *Officers and Directors.*—No domestic insurer shall pay
3 any commission or brokerage for the purchase or sale of
4 property in excess of that usual and customary at the
5 time and in the locality where such purchases or sales
6 are made. No officer or director of a life insurance com-
7 pany shall receive any money or valuable thing for ne-
8 gotiating or recommending any loan or investment from
9 such company, or for selling or aiding in the sale of stocks,
10 securities or property to or by such company.

Sec. 45. *Authorization of Investments.*—No investment,
2 loan, sale or exchange thereof shall, except as to the policy
3 loans of a life insurer, be made by any domestic insurer
4 unless authorized or approved by its board of directors
5 or by a committee thereof charged by the board of direc-
6 tors or by the by-laws with the duty of making such in-

7 vestments, loan, sale or exchange. The minutes of any
8 such committee shall be recorded and reports thereof shall
9 be submitted to the board of directors for approval or
10 disapproval.

Sec. 46. *Record of Investments.*—As to each investment
2 or loan of the funds of a domestic life insurer a written
3 authorization thereof in permanent form shall be made,
4 and signed by the officer or chairman of the committee
5 authorizing the investment or loan.

Sec. 47. *When Investments Must Comply.*—The invest-
2 ments in securities and real estate of all domestic insurers
3 shall be made to conform to the requirements of this act
4 by not later than five years after the effective date of
5 this act, but the commissioner may, on application by
6 the insurer, extend the time for such conformance for
7 such period or periods as he may deem proper on the
8 showing made, if he is satisfied that such insurer will
9 suffer materially by the forced sale of any securities or
10 property not conforming; and the commissioner shall
11 grant a hearing to the insurer upon request. *Provided,*
12 That any investments in common stocks lawfully made

13 prior to the effective date of this act may be retained by
14 such insurers, any provisions of this act to the contrary
15 notwithstanding.

Sec. 48. *Personal Liability and Penalty for Improper
2 Loan or Investment; Inconsistent Acts Repealed.*—Every
3 officer or director of a life insurance company knowingly
4 consenting to a loan or investment, in willful violation
5 of any of the provisions of sections thirty-seven, thirty-
6 eight, thirty-nine, forty, forty-one, forty-two, forty-three,
7 forty-four, forty-five or forty-six of this article shall be
8 personally liable to the company for any loss which may
9 be sustained by such loan or investment, to be recovered
10 in an action to be brought by the insurance commissioner
11 on the complaint of any policyholder or stockholder in
12 the company suffering thereby, and in addition thereto
13 shall be guilty of a misdemeanor, and, upon conviction,
14 punished by a fine of not more than one thousand dollars
15 and imprisoned not more than one year. All acts and
16 parts of acts inconsistent with the provision of this act
17 are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Joseph L. McMan
Chairman Senate Committee

Ray Matthews
Chairman House Committee

Originated in the House of Delegates

Takes effect from passage.

Howard Meyer
Clerk of the Senate

J. Atwell
Clerk of the House of Delegates

Raymond A. Stewart
President of the Senate

W. E. Ramsey
Speaker House of Delegates

The within APPROVED this the 18TH

day of MARCH, 1949.

Okay R. Patterson
Governor

Filed in the Office of the Secretary of State
of West Virginia MAR 18 1949

D. PITT O'BRIEN,
SECRETARY OF STATE